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No. 83-724

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IN THE  
**Supreme Court of the United States**  
OCTOBER TERM, 1983

GOMEZ-BETHKE,

*Petitioner,*

v.

UNITED STATES JAYCEES,

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT  
OF APPEALS FOR THE EIGHTH CIRCUIT

**BRIEF FOR THE NAACP LEGAL DEFENSE AND  
EDUCATIONAL FUND, INC., AMICUS CURIAE  
IN SUPPORT OF PETITIONER**

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GOMEZ-BETHKE,

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v.

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On Writ of Certiorari to The  
United States Court of Appeals  
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BRIEF FOR THE NAACP LEGAL DEFENSE AND  
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IN SUPPORT OF PETITIONER

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Interest of Amicus Curiae

The NAACP Legal Defense and Educational Fund, Inc., has long been concerned with discrimination and deprivation of civil rights of any kind. Discrimination

against women among private organizations and clubs rests on the same ill-founded claims that are offered to defend racial discrimination in the same kinds of institutions. Whatever the basis for a privacy defense in some cases, the NAACP Legal Defense and Educational Fund, Inc., seeks to demonstrate that such claims have no basis when the organization in question is neither genuinely private nor uninvolved in the commercial life of the community. Petitioner and Respondent have consented to the filing of this brief. Written consent of the petitioner accompanies this brief. Written consent of the respondent will be forwarded to the Court under separate cover. Therefore, we file this brief *amicus curiae*.



I

THE UNITED STATES JAYCEES DO NOT FALL WITHIN THE ZONE OF PRIVACY WHICH RENDERS PRIVATE CLUBS AND ORGANIZATIONS IMMUNE FROM GOVERNMENT REGULATION

This case involves an asserted right of private association, which is challenged by the state's unquestioned power to regulate business activity. While there may be a constitutional right to participate in some private clubs, amicus submits that in situations where private, confidential, intimate association is minimal and where business activity is substantial, claims of privacy must yield to the state's power to regulate commercial conduct. This is such a case.

While there is no precise definition of genuinely private clubs, courts have articulated several criteria for identifying them. These include selectivity,<sup>1/</sup>

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<sup>1/</sup> See Sullivan v. Little Hunting Park, Inc., 396 U.S. 299 at 236 (1969) (plan or

size,<sup>2/</sup> business involvement,<sup>3/</sup> and other functions.<sup>4/</sup> The most important analysis con-

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1/ continued

purpose of exclusiveness necessary for private club status).

2/ In Nesmith v. Y.M.C.A., 397 F.2d 96 (4th Cir. 1968), because there were no limits set on the size of membership and over 99% of white applicants were accepted, the Raleigh YMCA was held to be a public establishment.

3/ In Daniel v. Paul, 395 U.S. 298 at 301 (1969), the Court described the assertion of private club status as a sham, stating, "it is simply a business operated for profit with none of the attributes of self-government and member-ownership traditionally associated with private clubs".

4/ See Wright v. Cork Club, 315 F. Supp. 1143 (1970). Minimum standards that should be met by any organization to come within private club exemption include (1) machinery to carefully screen membership; (2) limitation on the use of facilities and services to members and bona fide guests of members in good standing; (3) control of the organization by its members; (4) the organization must be non-profit and operated solely for the benefit and pleasure of the members; (5) publicity, if any, is directed solely and only to members for their information and guidance.



cerns membership policies. The Jaycees offer no selection criteria for membership other than age and sex. The Executive Director for the affiliated organization of Minnesota stated that he had no knowledge of a single rejection of any application for membership. The National Offices and Directors Guide 1977-78 asks: "What is your obligation as Jaycees? Is it to only recruit a chosen few who ... are deemed to be quality members? ... How you sign up a member is not nearly as important as what you do with that member once he has been inducted". Valdes Vavere, the president of the Minneapolis Chapter, testified that the Jaycees should not make value judgments about people [they] are considering, that everyone should be considered (T. 162). There appears to be no limit on the size of the membership. One of the major activities of the Jaycees is the sale of membership in

the organization. It encourages continuous recruitment of members with the expressed goal of increasing membership. The Minnesota Human Rights Commission found that more than eighty percent of national officers' time is dedicated to recruitment, and more than half of the available achievement awards are in part conditioned on achievement in recruitment.

The business characteristics of an association also determine its public or private classification. Cornelius v. Benevolent Protective Order of Elks, 382 F. Supp. 1182, 1204 (D. Conn. 1974) ("to have their privacy protected, clubs must function as an extension of members' homes and not their businesses..."). To assess the amount of commercial activity within a club, one commentator has suggested weighing such various objective criteria as business in which members are involved,

employer subsidy or membership, deductibility of expenses, use of the club for business purposes and subject matter of meetings.<sup>5/</sup>

That the Jaycees is an extension of a person's business is apparent from its purposes, characteristics, and programs. In addition to the large number of businessmen in its membership and the business contacts they provide, the organization was founded for the sole purpose of promoting the business interests of its members. See N.Y. City Jaycees, Inc. v. The U.S. Jaycees, Inc., 512 F.2d 856, 858 (2d Cir. 1975). Toward this end, the Jaycees claims to be a young man's training organization

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<sup>5/</sup> E. Lynton, Behind Closed Doors: Discrimination by Private Clubs: A Report Based on City Commission on Human Rights Hearings (1975) at 56-57. Cited and quoted in Michael M. Burns, The Exclusion of Women from Influential Men's Clubs: The Inner Sanctum and the Myth of Full Equality, 18 Harv. Civ. Rts. L. Rev. 351 (1983).

emphasizing the development of management ability. The president of the national organization in letters published in Future (the official publication of the organization) maintains that it is the "greatest young men's leadership training organization..." Future Jan. - Feb. 1979 at 4 (Exhibit 55A-79). Programs and materials provided include a personal dynamics program, a public speaking program, and leadership dynamics materials. The commercial nature of the organization is further evidenced by the fact that it is oriented toward civic and business rather than social activities. Of considerable importance are the ties to corporations through sponsorship of members. Corporations apparently accept the Jaycees claim that it gives members an advantage in business and civic advancement and pay membership fees for their employees.

This corporate recognition of the Jaycees training is seen in promotional practices as well. As one woman testified, she was told to join the Jaycees by the personnel department of her company upon inquiring about promotion possibilities (T. A210-211).

Indeed, the Jaycees is a business itself in a very real sense. It sells leadership training, business contacts, and promotions in exchange for membership fees. It solicits members and refers to them as Jaycees officers' "customers". Officer & Director's Guide 1978-70. The national organization's Recruitment Manual's Preface states: "JAYCEES THE PRODUCT you are selling is outstanding from any angle. Jaycees is the 'best value' you can get" (emphasis in original). The Recruitment Manual states that "[o]nce a young man becomes a member, the responsibility to

deliver the goods you sold him begins."

Moreover, Jaycees also provide a variety of products featured in the Jaycees magazine (Ex. 27), including personal items, travel accessories, casual wear, officer pins, awards and gifts (Ex. 15) which may be purchased by anyone through the mail and by telephone from the national office (Ex. 80, p. 17; T. A80, B57). The Minnesota state office also maintains Jaycees products for sale to local chapters and others (T. A78, B57). The state organization receives a commission from the national organization for its promotion of U.S Jaycees products (T. A79). Indeed as a business alone, Jaycees should be subject to the normal regulation which the state may impose on commercial enterprises. Railway Mail Ass'n v. Corsi, 326 U.S. 88 (1945).



II

THE STATE HAS A LEGITIMATE AND SUBSTANTIAL INTEREST IN SECURING FOR WOMEN THE SAME OPPORTUNITIES AND ADVANTAGES PRIVATE ORGANIZATIONS OFFER MEN

It requires no citation of authority to assert that where an activity inflicts substantial harm on society or a segment of it, the state may regulate that activity unless it enjoys some countervailing protection. In the first section we have demonstrated that whatever protection genuinely private organizations may have, the Jaycees do not inhabit that zone. Here we argue that where discrimination by a private organization inflicts such harm, the state may prohibit it.

That membership in prestigious clubs affects career opportunities is indisputable.<sup>6/</sup> Indeed, the American Bar Associa-

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<sup>6/</sup> "Epecially in the years since the end of the Second World War, membership in one or two of the leading men's clubs, which

tion has called for an amendment to the Civil Rights Act of 1964 which would subject to its provisions sex discrimination in clubs where a substantial amount of business is conducted. Summary of Action of the House of Delegates of the American Bar Association for the 1983 Annual Meeting p. 35. This amendment, of course, would perform the function in national legislation which the Minnesota law performs within that state.

The nation's evolving public policy against gender discrimination can be seen in the areas of employment, housing, and credit opportunities as well.<sup>7/</sup> The Jaycees

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6/ continued

lie at the center of commercial power in most large cities in the nation, has become a tacit prerequisite for promotion to the top positions in the executive suites of our large national corporations". E. Baltzell, The Protestant Establishment 362 (1964).

7/ See, Civil Rights Act of 1964, 42

cannot reconcile their membership policies with their proclamation of responsiveness to community needs in light of the fundamental national commitment to end discrimination.

The Survey Research Center of the University of Michigan has found that fifty-eight percent of the executives responding to a survey felt that belonging to the "right" clubs or lodge definitely affected a person's opportunities for promotion.<sup>8/</sup> In a 1969 study sponsored by the American Jewish Committee, corporate executives were interviewed with regard to the types of professional advantages

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7/ continued

U.S.C. § 2000(a) (1976)(employment); Fair Housing Act of 1968, 42 U.S.C. §§ 3601-3619 (1976)(housing); Equal Credit Opportunity Act, 15 U.S.C §§ 1691, 1691(a)-1691(f) (1976) (credit).

8/ Berry, New Assaults Coming in Those Exclusive Private Clubs, Bergen Record, Dec. 12, 1976.

provided by social clubs: 61.5% believed that the "club is a place where information directly or indirectly relevant to the firm is obtained"; 50.5% believed that the "club provides contacts which are valuable in obtaining business"; 87.2% felt that the "club affords a prestigious place where guests and customers can be taken for informal lunches and association"; 67.9% believed that "club membership adds to one's status in the firm and/or in the community"; 64.2% agreed that the "club provides an environment for the development of personal friendships which may assist an individual directly or indirectly to gain promotion within his firm"; and 71.6% believed that the "club provides an environment in which to make contacts and friends leading to better positions in other companies".<sup>9/</sup>

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<sup>9/</sup> R. Powell, The Social Milieu as a Force in Executive Promotion (1969) at 8.

The business world's commitment to these attitudes is seen in employer willingness to pay club dues. For example, the National Club Association estimates 37% of its members' dues are paid directly by business and that percentage does not include reimbursement of dues paid in the first instance by employees.<sup>10/</sup> The president of New York City's University Club has assumed conservatively that employers are the source of well over 50% of its dues and fees.<sup>11/</sup>

This exclusion of women not only deprives female employees of an advantage their male counterparts receive, it has served as a grave disadvantage in their careers. Ineligibility for club membership has been cited as a reason for not promot-

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<sup>10/</sup> Schafran, Private Clubs, Women Need Not Apply, 23 Foundation Press, 5 (1982).

<sup>11/</sup> Id. at 5.

ing women to executive positions. Less blatantly, women are hindered by not being able to meet knowledgeable peers or learn the earliest news of job openings, business opportunities, grants to be awarded, and so forth.

The Supreme Court in McLaurin v. Oklahoma State Regents, 339 U.S. 637, 641 (1959), and Sweatt v. Painter, 339 U.S. 629, 624 (1959), accorded constitutional protection to the interchange of ideas and values among blacks and whites. It stressed the importance of knowing and understanding the people with whom one must inevitably interact in the course of business. The Minnesota statutory scheme attempts to aid business men and women of that state in interacting with the opposite sex in similarly mutually fruitful ways.

More important than the practical, business effects referred to above, is the



social impact - with business consequences - exclusion has on women and men throughout society. A New York public official has observed that banning women from informal centers of power "reinforces the perception that women are not appropriate participants where formal power is exercised."<sup>12/</sup>

The Jaycees is a highly visible organization in the community. It represents that its members constitute the thriving business population of America. The absence of women from this population not only reinforces notions that business is a man's world and lends substance to harmful prejudices, it inhibits women's ability to function in business and stifles aspirations of future generations.

Surely, the state may address such a situation. Minnesota merely has exercised

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<sup>12/</sup> Schafran, supra at 5.

conventional police power in prohibiting a harmful discrimination. Its authority should be upheld.

CONCLUSION

The decision of the court of appeals should be reversed.

Respectfully submitted,

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